



October 12, 2018

BY ELECTRONIC SUBMISSION ONLY

The Honorable Steven Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

In our sustained efforts to assist in President Trump's regulatory reforms under executive orders 13771 and 13777, the Office of Advocacy (Advocacy) has continued to hear from small businesses across the country about specific regulatory burdens that they face. As you know, under the Regulatory Flexibility Act (RFA) agencies are required to consider the impact of their regulations on small entities when promulgating federal regulations.¹ Advocacy believes the RFA and consideration of small business economic impacts is a good place to start when an agency is selecting rules that are being reviewed for reform or elimination.

We have continued to hold roundtables in cities across the country since our last letter to you in September 2017. Below are the issues that small businesses have brought to our attention:

- Independent automobile dealers have to issue a Form 1099-C, Cancellation of Debt, to their customers who stop making payments on vehicles they have purchased. Treasury

¹ Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so its views do not necessarily reflect the views of the SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. 5 U.S.C. § 601 et seq.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments Advocacy provides. The agency must include, in any explanation or discussion accompanying a final rule's publication in the Federal Register, the agency's response to written comments Advocacy submitted on the proposed rule, unless the agency certifies that the public interest is not served by doing so. Small Business Jobs Act of 2010 (PL 111-240) § 1601.



regulation § 1.6050P-2(c) exempts seller financing from the requirement to issue a Form 1099-C. But the Form 1099-C instructions include a sentence stating that the reporting requirement applies if a separate financing subsidiary of the retailer extends the credit to the retailer's customers. This requirement is not in the statute or the regulations.

- The disclosure of preparer information is of concern to those who prepare Form 5500, Annual Return/Report of Employee Benefit Plan. Data mining firms would be able to aggregate the data from the Forms 5500, essentially creating a client list for each Form 5500 preparer; that information would normally constitute a trade secret and should not be included in the information from the form that is made public.
- Repeal of the "Top 25" rule. Treasury Regulation § 1.401(a)-5(b) is duplicative and overly burdensome for small businesses since the Pension Protection Act of 2006 created a separate set of restrictions on distributions applicable to plans that are less than 80 percent funded on a target basis liability.
- Update instructions to Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, to clarify that the late deposit of 403(b) plan deferrals are not subject to an excise tax.
- The IRS Employee Plans Compliance Resolution System (EPCRS) should include expanded self-correction options for participant loan failures. This would allow small businesses to correct the problems without having to incur the costly Voluntary Correction Program fee or having to report the loan as a deemed distribution to and a taxable event for the participant.

Advocacy looks forward to continuing to work with Treasury to reduce the burden of federal regulations on behalf of the small businesses that have asked us to be their voice in this regulatory reform process. We hope that you will include these specific issues when you compile your list of rules to review. Advocacy would be happy to meet with you or your representative so that we may detail the concerns and help suggest less burdensome alternatives for small business as rules are being considered for revision. I have provided the contact information for Assistant Chief Counsel Charles Jeane below.

As we continue to hear from small businesses across the country at our regional regulatory reform roundtables, from our regulatory reform website, and through our outreach, we will update you with additional issues small businesses bring to Advocacy's attention.

Thank you for considering small business impacts as a vital part of your regulatory reform efforts and for including Advocacy as an important part of the process.

Sincerely,



Major L. Clark, III

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